

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

77-2083

To be argued by
RAYMOND L. SWEIGART

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-2083

JOHN PETER GALANIS,
Petitioner-Appellant,

—v.—

ERMEN PALLANCK, U.S. Marshal for the
District of Connecticut,
Respondent-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE APPELLEE

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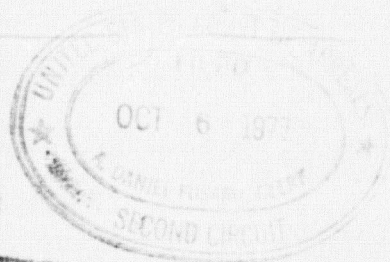


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BRIEF FOR THE APPELLEE

Statement of the Case

This is an appeal from a judgment of the United States District Court for the District of Connecticut (Zampano, J.) denying the Petitioner Galanis' request made pursuant to 28 U.S.C. § 2241 for a Writ of Habeas Corpus. The Petitioner seeks to effect his release from the custody of the Respondent United States Marshal where he is being held for extradition to Canada.

The instant Petition for habeas corpus relief was filed on March 28, 1977. On April 5, 1977, Judge Zampano issued an Order to Show Cause why the relief requested should not be granted. A Response to that Order was filed by the Respondent on April 20, 1977. The Petitioner filed a Reply Brief, and a hearing was held on April 26, 1977. The Petition was denied in a memorandum ruling on June 16, 1977; and Notice of Appeal to this Court followed on July 18, 1977.

Questions Presented

1. Did the District Court err in limiting the scope of its habeas corpus review to that traditional in collateral attacks on extradition orders?
2. Did the District Court err in ruling that the provisions of the Webster-Ashburton Treaty of 1842 were properly applied to petitioner's extradition?
3. Did the District Court err in ruling that the evidence submitted at the extradition hearing was competent and sufficient to support extradition?

Statement of Facts

On September 1, 1976, the United States of America acting on behalf of the government of Canada filed a Complaint with the United States District Court for the District of Connecticut seeking the extradition of one John Peter Galanis to stand trial in Canada on charges that he had defrauded a Canadian corporation, Champion Savings Corporation, Ltd., and its creditors of securities valued at One Million Six Hundred Thousand Canadian Dollars (\$1,600,000,00). On that same date, pursuant to an Order of Reference from the Honorable Jon O. Newman, United States District Judge for the District of Connecticut, the Honorable Arthur H. Latimer, United States Magistrate, entertained the Complaint and issued a Warrant for the arrest of John Peter Galanis.

On or about September 9, 1976, pursuant to that Warrant of Arrest, Galanis was found within the District of Connecticut and taken into custody by Deputies of the United States Marshal. Galanis was immediately brought before Magistrate Latimer where he executed an Appearance Bond and was released from physical custody.

Pursuant to the requirements of 18 U.S.C. § 3184, a hearing as to whether Galanis was subject to surrender to the Government of Canada was commenced on November 20, 1976 before District Judge Newman. That hearing was continued on December 3 and 6, 1976. During this proceeding, Galanis was represented by retained counsel. Extensive briefs were filed, witnesses called and examined, and arguments made by counsel.

On March 8, 1977, Judge Newman entered a lengthy Memorandum and Order in which he found that sufficient probable cause exists to believe that Galanis committed the offense charged by Canada and that he had no valid defense to extradition. *United States v. Galanis*, N-76-385 (March 8, 1977), (App. 6-53). The record was certified to the Secretary of State of the United States, and Galanis was continued in the custody of the United States Marshal under the conditions of bond then in effect to await surrender to Canada pursuant to an executive warrant of extradition. Presently Galanis remains in the lawful custody of the United States Marshal under authority of Judge Newman's Order of March 8, 1977. That Order is not appealable.

Before consideration could be given by the Secretary of State to the issuance of an executive warrant of extradition, Galanis applied to the Honorable Robert C. Zampano, United States District Judge for the District of Connecticut seeking release by Writ of Habeas Corpus. The Writ was denied and this appeal follows from that denial.

ARGUMENT

I.

The District Court Did Not Err In Limiting The Scope Of Its Review To That Traditional In Collateral Attacks On Extradition Orders.

A. Strong Policy Considerations Exist For Limiting The Scope of Judicial Intervention In International Extradition Proceedings.

The distinct nature of international extradition proceedings, the delicate problems posed by international relations and the effectuation of treaties have long supplied this country's judiciary with ample grounds for refusing to extend its inquiry into extradition matters further than the treaties, enabling statutes and the interests of safety and justice require. The Supreme Court's ruling in *Ornelas v. Ruiz*, 161 U.S. 502 (1896), could hardly have been clearer in circumscribing the scope of habeas corpus review.

By repeated decisions of this court it is settled that a writ of habeas corpus cannot perform the office of a writ of error, and that, in extradition proceedings, if the committing magistrate has jurisdiction of the subject matter and of the accused, and the offense charged is within the terms of the treaty of extradition, and the magistrate, in arriving at a decision to hold the accused, has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition such decision cannot be reviewed on habeas corpus. [Citations omitted]. 161 U.S. at 508.

In reaching this conclusion the Court reviewed the nature of international extradition, the applicable treaties and congressional enactments and approved the earlier decision of Justice Blatchford in *In re Stupp*, 12 Blatch. 501, Fed. Cas. No. 13,563, stating with respect to the habeas court that it "... is not to inquire whether the legal evidence of facts before the [extradition magistrate] was sufficient or insufficient to warrant his conclusion." Therefore, the Court concluded that an extradition order could not be reviewed on the weight of the evidence, and is final for the purposes of preliminary examination unless palpably erroneous in law.

When faced again with this question in *Fernandez v. Phillips*, 268 U.S. 311 (1925), the court reaffirmed the narrow scope of review noting that habeas corpus "... is not a means for rehearing what the magistrate has already decided."

These two decisions of the Supreme Court remain the vital determinants of the task which confronted Judge Zampano in reviewing Judge Newman's extradition order on this petition for habeas corpus relief. The petitioner conceded before the District Court and in his brief to this Court the restricted nature of his plea, but continues to argue that the extradition proceeding before Judge Newman was so lacking in due process as to warrant protection of his constitutional rights through extraordinary utilization of the Great Writ.

B. Nothing In This Case Warrants The Exceptional Relief Requested By Petitioner.

The petitioner's argument that he is entitled to habeas corpus relief appears based upon this Court's statements in both *Gallina v. Fraser*, 278 F.2d 77, 79 (2nd Cir. 1960), affirming and adopting 177 F. Supp. 856 (D. Conn. 1959), *cert. den.*, 364 U.S. 851, *reh. den.*, 364 U.S.

906 (1960); and *U.S. ex rel. Bloomfield v. Gengler*, 507 F.2d 925 (2nd Cir. 1974); that situations could be imagined where extradition would be so antipathetic to a federal court's sense of decency as to require reexamination of the principle of strictly circumscribed review established by the Supreme Court in the *Ornelas* and *Fernandez* cases, *supra*.

The Fifth Circuit Court of Appeals, which had also limited itself to a narrow scope of review on habeas corpus in extradition matters, *cf. Garcia-Guillern v. United States*, 450 F.2d 1189, 1191 (5th Cir. 1971), felt compelled to extend those limits in what it considered egregious circumstances. This extension, however, was not without hesitancy. See *Geisser v. United States*, 513 F.2d 862 (5th Cir. 1975); on remand *Petition of Geisser*, 414 F. Supp. 49 (S.D. Fla. 1976), *vacated and remanded*, 554 F.2d 698 (5th Cir. 1977). It was also not without the strongly worded dissent of Circuit Judge Coleman arguing for immediate enforcement of the extradition treaty. 554 F.2d at 707-08.

In this habeas corpus action, the petitioner tries to equate his position with that of the petitioner in *Geisser*. Assuming that the *Geisser* case represents good law, the situation there is factually distinguishable from that presented to this Court. In *Geisser* the federal prosecutor as part of a plea agreement promised that the United States Justice Department would use its best efforts to assure that the defendants would not be extradited to Switzerland under an outstanding extradition order. The court was confronted with a very strong showing that that plea agreement had been grossly breached by the government.

As the petitioner herein concedes, and as Judge Newman found (App. 12-13), the actual agreement made prior to the petitioner's guilty pleas contained no provi-

sion whatsoever for protection from extradition or foreign prosecution. As a matter of fact at the time of the plea agreement the Canadian charges upon which this challenged extradition is based had not as yet been filed. Accordingly, during the extradition hearing before Judge Newman, the issue was joined over the narrow dispute as to whether the extradition proceeding violated an agreement, made to insure petitioner's continued cooperation as a witness, that no information provided by him would be used against him in any extradition proceeding to which the United States was a participant.

The argument that the petitioner was granted total transactional immunity which precluded United States government participation in an extradition proceeding against him was not raised until the filing of briefs after the extradition hearing was completed. This post-hearing shift of position by petitioner's counsel was troublesome to Judge Newman (App. 11) and it has been a problem for the government, as well. In his brief to this Court, the petitioner relies heavily upon what he terms a concession by government counsel at the habeas corpus hearing to the effect that the petitioner was in fact granted "transactional" immunity. Putting aside the obvious semantic morass created by the introduction of the term "transactional," a reading of the entire transcript (Tr. 151 *et seq.*)* clearly reveals that the government conceded nothing more than that Judge Newman's factual findings on immunity were correct. The government clearly contended that the consideration for which the petitioner bargained and which he received in exchange for his guilty pleas and cooperation was immunity from United States prosecution for crimes concerning any matters which he discussed with the American authorities, and a government promise to insure that any in-

* References to the transcripts are in accordance with their pagination as inclusions to the joint appendix.

formation thus obtained would not be used against him in any proceeding, including extradition, to which the United States would be a party (Tr. 177-78, 182). After considering the arguments, Judge Zampano concluded that "all the government is doing is stating before this Court what Judge Newman found as a fact before him." (Tr. 184). The government's position has consistently been that this ruling is correct. This factual finding by Judge Newman was not subject to review by Judge Zampano and he correctly so ruled.

The petitioner, therefore, remains only with his original contention that the conceded "use" immunity agreement was breached by the government. The crux of his contention in this regard is not that he established any breach but that the government failed to carry its "heavy" burden as required under *Kastigar v. United States*, 406 U.S. 441 (1972); and as recently illucidated by this Court in *United States v. Nemes*, 555 F.2d 51 (2nd Cir. 1977).

Those cases require that in the context of a criminal prosecution of a defendant previously granted immunity the government has the affirmative duty to demonstrate that an independent source exists for all evidence presented in support of conviction. Relying on these cases, the petitioner takes Judge Newman to task for suggesting that there are policy reasons for requiring a less exacting procedure in the context of international extradition. However, as Judge Newman pointed out "[a]n extradition proceeding is not a criminal prosecution, and the constitutional safeguards that accompany a criminal trial do not shield an accused from extradition pursuant to a valid treaty. *Neely v. Henkel*, 180 U.S. 109 (1901); *Ex Parte LaMantia*, 206 F. 330 (S.D.N.Y. 1913)." (App. 28) For as this court concluded in *In Re Neely*, 103 F. 626, 628 (Cir. Ct. S.D.N.Y. 1900): "The provisions of articles 4 and 5 of the amendments to the constitution have no relation to the subject of extradition. *In Re DeGiacomo*,

12 Blatch. 391, Fed. Cas. No. 3,747." That view was affirmed by the Supreme Court in *Neely v. Henkel*, *supra*. Therefore, the petitioner cannot claim all the niceties of a criminal trial under the laws of the United States. *Glucksman v. Henkel ex rel. Rauch*, 221 U.S. 508, 512 (1911); *Benson v. McMahon*, 127 U.S. 457, 463 (1888); *Merino v. U.S. Marshal*, 326 F.2d 5, 12 (9th Cir. 1963), *cert. den.*, 377 U.S. 997, *reh. den.*, 379 U.S. 872 (1964); *United States ex rel. Rauch v. Stockinger*, 269 F.2d 681, 687 (2nd Cir.), *cert. den.*, 361 U.S. 913 (1959); *United States ex rel. Oppenheim v. Hecht*, 16 F.2d 955, 956 (2nd Cir. 1927); *United States ex rel. Klein v. Mulligan*, 1 F. Supp. 635, 636 (S.D.N.Y.), *aff'd*, 50 F.2d 687 (2nd Cir. 1931); also *Bingham v. Bradley*, 241 U.S. 511, 517 (1916); *Kelly v. Griffin*, 241 U.S. 6, 15 (1915); *Grin v. Shine*, 187 U.S. 181 (1902). The inescapable conclusion follows, as the court held in *Merino v. U.S. Marshal*, *supra*, 326 F.2d at 11, 12 and 13 that the laws and procedures generally applicable in criminal cases in the United States "are not applicable to a preliminary examination in an international extradition case. See *Oteiza y Cortes v. Jacobus*, 136 U.S. 130 (1890)."

Furthermore, to require the demanding country to meet the burden petitioner would impose upon it would require it to send any number of its citizens to this country to testify, thus defeating the whole object of the extradition treaty. *Shapiro v. Ferrandina*, 478 F.2d 894 (2nd Cir. 1973), *citing*, *Bingham v. Bradley*, 241 U.S. 511 (1916).

Despite what the respondent considers ample authority to do so, Judge Newman did not stop with this suggested lower burden. He went on to apply the "heavy" burden to the government and found as a matter of fact that the bulk of the evidence presented by the Canadian authori-

ties, sufficient to establish probable cause, did come from sources wholly independent of petitioner's testimony. (App. 24) Judge Zampano found not only that this factual ruling was not subject to his review but that, in any event, the record clearly supported Judge Newman's findings. (App. 57)

Therefore, in considering the scope which his collateral review of Judge Newman's extradition order should take, Judge Zampano was faced with no exceptional circumstance which would justify his exceeding the directives of the Supreme Court in the *Ornelas* and *Fernandez* cases, *supra*, or the reminder in *Collins v. Loisel*, 259 U.S. 309 (1922), that mere errors in rejecting or accepting evidence at an extradition hearing are not subject to review by a writ of habeas corpus.

II.

The District Court Did Not Err In Ruling That The Webster-Ashburton Treaty Of 1842 Applied To Petitioner's Extradition.

The petitioner's claim of double jeopardy relies completely upon his contention that the provisions of Article 4 of the Treaty of Extradition Between the United States and Canada of 1971, which prohibits the extradition of persons who have already been proceeded against and punished in the asylum country for the crime for which extradition is demanded, apply to his extradition.

In ruling upon this contention both Judge Newman, as extradition magistrate, and Judge Zampano, as habeas judge, found that Article 4 of the 1971 Treaty does not apply to petitioner's extradition. In so deciding they reviewed the explicit language of the Treaty which provides in Article 18:

(2) This Treaty shall terminate and replace any extradition agreements and provisions on extradition in any other agreement in force between the United States and Canada; *except that the crimes listed in such agreements and committed prior to entry into force of this Treaty shall be subject to extradition pursuant to the provisions of such agreements.* [emphasis supplied].

T.I.A.S. No. 8237. The 1971 Treaty entered into force on March 2, 1976. The petitioner does not dispute that the crime with which he is charged was allegedly committed during a period between January of 1971 and December of 1972, almost five years before the 1971 Treaty entered into force. The plain language of the 1971 Treaty, therefore, dictates that petitioner's extradition must be pursuant to the provisions of the previous agreements on extradition then in force, Article 10 of the Webster-Ashburton Treaty of 1842, 26 Stat. 1508, as supplemented by the Extradition Conventions of 1889, 1900, and 1951.

This conclusion is not only supported by the unambiguous language of the 1971 Treaty itself, but as Judge Newman noted (App. 26) two other persuasive considerations support the preclusion of retroactivity. First, in submitting the Treaty to the President, the accompanying letter from Robert S. Ingersoll, Acting Secretary of State straightforwardly concludes: "The Treaty is *not retroactive* in effect." (Emphasis supplied). See Message from the President of the United States Transmitting the Treaty on Extradition Between the United States of America and Canada, 93rd Cong. 2d Sess. (1974), at p. vi. Second, Mr. K. E. Malmberg, Assistant Legal Advisor for Management in the Office of the Legal Advisor, United States Department of State, submitted an affidavit in the extradition proceeding which stated that "all of the provisions on extradition in other agreements

in force prior to the 1971 treaty, and not the provisions of the 1971 treaty, apply to crimes listed in such other agreements which were committed prior to March 22, 1976."

Statements such as these by the Department of State as to interpretations of treaties are to be given great weight by our courts because the conduct of foreign affairs is a political and not a judicial function and because of the deference which must be accorded that department's expertise *Factor v. Laubenheimer*, 290 U.S. 276, 295 (1933); *Terlinden v. Ames*, 184 U.S. 270 (1902); *Sayre v. Shipley*, 418 F.2d 678, 683-684 (5th Cir.), *cert. den.*, 398 U.S. 903 (1969); *In Re Ryan*, 360 F. Supp. 270, 272 (note 4) (E.D.N.Y.), *aff'd*, 478 F.2d 1397 (2nd Cir. 1973); *Application of D'Amico*, 177 F. Supp. 648, 653 (S.D.N.Y. 1966); and *Gallina v. Fraser*, 177 F. Supp. 856, 863-64 (D. Conn. 1959), *aff'd*, 278 F.2d 77 (2nd Cir. 1960). Where the views of the Department of State are in accord with the plain language of the Treaty, they should be considered determinative.

The petitioner's arguments all begin from the premise that the treaty is ambiguous and fairly admits of several alternative constructions. Inasmuch as the treaty on its face controverts any inference of retroactivity, his arguments can carry no persuasive force here and his conclusions must fall.

Once the issue of the 1971 Treaty's applicability is decided, petitioner apparently concedes that his arguments find no support under the constitution or the provisions of the Webster-Ashburton Treaty, as supplemented. *In Re Ryan*, 360 F. Supp. 270, 275 (E.D.N.Y.), *aff'd*, 478 F.2d 1397 (2nd Cir. 1973); *United States ex rel. Bloomfield v. Gengler*, 507 F.2d 925 (2nd Cir. 1974); and *Holmes v. Laird*, 459 F.2d 1211, 1216 (D.C.Cir.), *cert. den.*, 409 U.S. 869 (1972).

Judge Zampano in reviewing Judge Newman's ruling in this regard clearly committed no error subject to reversal by this court.

III.

The District Court Did Not Err In Ruling That The Evidence Submitted At The Extradition Hearing Was Competent And Sufficient To Support Extradition.

While apparently conceding that the documentary evidence before Judge Newman provided a sufficient showing of probable cause to warrant extradition, the petitioner challenges its admissibility arguing that the evidence he offered to rebut the consular certification should have carried the day. He now urges this court to find that Judge Zampano erred in refusing to find that Judge Newman's evidentiary rulings were clearly erroneous.

The crux of this issue involves around the requirement of 18 U.S.C. § 3184 that the extradition magistrate find probable cause to sustain the charge against the accused before the Secretary of State may proceed with extradition. *In Re Gonzales*, 217 F. Supp. 717 (S.D.N.Y. 1963). Judge Newman's finding of probable cause was based upon a large amount of documentary evidence submitted on behalf of Canada. (App. 41-46). The reviewability of this finding is based upon the statement in *Fernandez v. Phillips*, 268 U.S. 311, 312 (1925) that the habeas judge's inquiry could include "by a somewhat liberal extension whether there was any evidence warranting the finding . . ." In *Shapiro v. Ferrandina*, 478 F.2d 894, 901 (2d Cir.), *cert. dismissed*, 414 U.S. 884 (1973), this court interpreted that "liberal extension" to include an inquiry as to the "competence" of the evidence

submitted. In *United States ex rel. Bloomfield v. Gengler*, 507 F.2d 925, 929 (2nd Cir. 1974), this court again spoke of its limited scope of review but included the competency of the evidence as a cognizable issue. In *Jhirad v. Ferrandina*, 536 F.2d 478, 482 (2nd Cir. 1976), this court was called upon to reaffirm the limited scope of habeas review in the international extradition context and retreated to the exact language of *Fernandez v. Phillips*, *supra*, omitting the reference to the competence of the evidence.

Of the other Circuit Courts which have followed this Court's lead on the subject, the Ninth Circuit in *United States ex rel. Sakaguchi v. Kaulukukui*, 520 F.2d 726 (9th Cir. 1975), approved the holding in *Shapiro*, *supra*, but appeared to be following that language in *Collins v. Loisel*, 259 U.S. 309, 317 (1922) which held that "evidence of criminality" referred "to the scope of the evidence or its sufficiency . . ." not "to the character of the evidence or to the rules governing admissibility." That court's review concluded by rejecting all attacks on competence and admissibility, and in citing *Fernandez v. Phillips*, *supra*, 268 U.S. at 311, emphasized the word "any" with no reference to competence. 520 F.2d at 730. The First Circuit in a case relied upon by petitioner determined that the habeas judge could within his restricted review decide whether proper evidentiary standards were applied by the extradition magistrate. *Greci v. Birknes*, 527 F.2d 956 (1st Cir. 1976). The Court, however, did not deal with 18 U.S.C. § 3190 other than to find it to be superceded in that case by the specific, unambiguous language in the applicable extradition treaty, which contained an additional requirement not found in § 3190 that depositions and other evidence be "given under oath."

Despite the unsatisfactory state of the case law on this subject, the petitioner goes on to assume that Judge

Newman's ruling as to the competence of Canada's evidence in support of extradition is reviewable, by Judge Zampano. Assuming with the petitioner that it is thus reviewable, it must be borne in mind that the standard of review still requires clear or palpable error.

Judge Newman in determining that a consular certification provides conclusive proof of underlying authentication so has to render the certified documents competent as evidence in support of extradition, first noted that the petitioner could cite no case where evidence has been received to rebut a proper certification of authenticity and he noted that the court could find none. On habeas review before Judge Zampano, no case law was cited in support of the petitioner's position. In his brief to this Court, nothing further is added. The petitioner does argue, however, that *Greci v. Birknes, supra*, 527 F.2d at 960, recognizes that the courts will look beyond consular certification. This implication, however, is incorrect. What the *Greci* court was saying in the footnote relied upon by petitioner is that, although the consular certification was sufficient under 18 U.S.C. § 3190, it did not meet the additional requirements specifically imposed by the treaty. The *Greci* situation is clearly distinguishable from the argument presented by petitioner.

In attempting to avoid the case authority cited by Judge Newman in support of his ruling, the petitioner argues that *In Re McPhun*, 30 F. 57 (C.C.A. N.Y. 1887), and *In Re Fowler*, 4 F. 303 (C.C.A. N.Y. 1880), support the ruling only by *dicta*. He fails to mention *Ex Parte Schorer*, 197 F. 67 (E.D. Wisc. 1912), which Judge Newman quoted as holding:

It seems to me that the amending act [now codified in § 3190] was clearly designed to prescribe a single test of admissibility of evidence in proceedings in this country. . . In other words, the amend-

ing statute intended to make the consular certificate the *final and controlling guide* in determining the admissibility of testimony before the extradition commission. [Emphasis added].

(App. 35). The petitioner also makes no mention of *In Re Behrendt*, 22 F. 699, 700 (S.D.N.Y. 1884), which Judge Newman relied upon for its holding that correct certification remedies any underlying defect in the previous authentication. The petitioner's response to these holdings is that they should no longer be accorded weight in this modern day of jet transportation whereby it is suggested the demanding government can easily fly in their expert witnesses to try the issues of foreign law. This argument was also advanced in *Shapiro v. Ferrandina*, *supra*, 478 F.2d at 902, and specifically rejected by this Court on the basis of *Bingham v. Bradley*, 241 U.S. 511 (1916). Furthermore these cases were decided shortly after the enactment of what is now § 3190. Their contemporaneous views must be accorded great weight.

As both Judge Newman and Judge Zampano noted in their decisions, this area would be entirely free from doubt were it not for certain conflicting statements in *Shapiro v. Ferrandina*, *supra*, and *dictum* which petitioner suggests contemplates the reception of evidence negating authenticity in some circumstances. As Judge Newman correctly points out, however, the *Shapiro* case clearly states at 478 F.2d 903 that a consular certificate "is conclusive." The problem in *Shapiro* was the arguable incompleteness of that certification. The petitioner, however, chooses to seize upon a concluding remark to the effect that the court was unwilling to release the petitioner "in the absence of any showing that the [evidence] documents were not authentic or not of the sort admissible in [the demanding country] for purposes of establishing the sufficiency of evidence." This he concludes amounts

to a holding that evidence negating authenticity is admissible and that the consular certificate is not conclusive.

Without belaboring the point, or repeating Judge Newman's analysis (App. 36-40) which clearly disposes of petitioner's argument, suffice it to say that the bottom line holding in *Shapiro* is quite clear. As the court stated at 478 F.2d 904: "While again applauding the ingenuity of this argument, we reject it as 'savor[ing] of technicality,' *Bingham v. Bradley*, *supra*, 241 U.S. at 517 . . . which is peculiarly inappropriate in dealings with a foreign nation."

Restrained as Judge Zampano was, and this Court is, by the limited nature of the extradition hearing and by the standards of review on habeas corpus, it simply cannot be said that Judge Newman committed a palpable error of law in admitting Canada's evidence against petitioner or in determining that it established sufficient probable cause to warrant his extradition to stand trial in Canada.

CONCLUSION

The respondent respectfully contends that Judge Zampano committed no error in ruling that the petitioner is lawfully held in custody pending his extradition. It is, therefore, as Justice Lurton so strongly stated in *Charlton v. Kelly*, 229 U.S. 447, 476 (1913), "the plain duty of this court to recognize the obligation to surrender [the petitioner] as one imposed by the treaty as the supreme law of the land and as affording authority for the warrant of extradition."

Respectfully submitted,

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United States Court of Appeals
FOR THE SECOND CIRCUIT

No. 77-2083

JOHN PETER GALANIS
Petitioner-Appellant

v.

ERMEN PALLANCK, U.S. Marshall for the
District of Connecticut
Respondent-Appellee

AFFIDAVIT OF SERVICE BY MAIL

Albert Sensale, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 914 Brooklyn Ave Brooklyn, N.Y.

That on the 6th day of October, 1977, deponent served the within Brief for the Appellee upon John S. Martin, jr., 1290 Ave of the Americas, New York, N.Y. 10019 Paul R. Grand, Esq. 375 Park Ave, New York, N.Y. 10022

Attorney(s) for the Appellant in the action, the address designated by said attorney(s) for the purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Post Office department within the State of New York.

Albert Sensale

Sworn to before me,

This 6th day of October 1977

[Signature]

NEIL SZNITKEN
Notary Public, State of New York
No. 41-4505652
Qualified in Queens County
Commission Expires March 30, 1979

